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Honorable Lewis J. Liman
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Martinenko v. 212 Steakhouse, Inc.
No. 22 CV 518 (LJL) – Status Report re: Document Production

Dear Judge Liman:

I represent the Defendants in the above entitled action. The Defendants at no time have delayed discovery and have supplied all of the documents within their possession and are waiting for some documents from a solo-practitioner accounting firm to complete the Plaintiff's discovery demands. The Defendants have been told that all of the accounting documents, which include payroll information, W-2's and wage statements for the two Plaintiffs will be provided by Thursday, July 21, 2022. This letter is being sent not as a joint letter due to time constraints imposed by the Plaintiff. The Plaintiff's provided a draft of the joint letter which this letter is responsive to.

To date, Defendants have produced the following documents: (1) the Named Plaintiff's time records for the years 2016-2018 and 2021; (2) the Named Plaintiff's paystubs for the year 2021; (3) the Corporate Defendant's 2019 and 2020 income tax returns; and (4) the tip records of the Named Plaintiff. The Plaintiffs seek the following additional documents:

1. The Named Plaintiff's personnel file; pay records, including wage statements, from 2016 to 2018; and W-2s. (Requests Nos. 1, 7-9.)

The Defendants have no personnel file for the Named Plaintiff, and any additional pay records, wage statements and W-2's shall be supplied by Thursday, July 22, 2022.

2. Opt-In Plaintiff Dagmara Huk's personnel file; time records, and pay records, including wage statements. (Requests Nos. 1, 3, 7-9.)

The Defendants have no personnel file for the Opt-In Plaintiff, and any additional pay records, wage statements and W-2's shall be supplied by Thursday, July 22, 2022.

3. All putative Class Members time records and pay records, including wage statements. (Requests Nos. 11, 15-16.)

The Plaintiff had a Collective Action certified and has not even filed a motion for class certification. Pursuant to their Collective Action notices sent, one additional Opt-In Plaintiff has joined the action. The Collective Action notice period has expired. The Plaintiff, at this time is not entitled to any other records other than that of the Named Plaintiff and Opt-In Plaintiff.

4. Documents sufficient to show the Individual Defendant's ownership interest in the restaurant throughout the Liability Period. (Request No. 19.) Although his ownership interest is reflected in the 2019 and 2020 tax returns that have been produced, no documents have been produced to show the Individual Defendant's ownership interest in the other years covered by this lawsuit.

The Individual Defendant has supplied the evidence in his possession of his ownership interest in the Restaurant.

5. Documents reflecting the Corporate Defendant's gross annual sales, including cash payments, and price of goods sold for the years other than 2019 and 2020.

The price of good sold is not relevant and the request is nonsensical. The Defendant has supplied proof of its gross annual sales.

6. The Corporate Defendant's bank statements.

The Defendant has requested all copies of its bank statements for the relevant periods from its bank which will be supplied to the Plaintiff upon their receipt.

7. The Defendant has no restaurant managers.

Upon my additional investigation there is no prior N.Y.S. Labor cases settled that releases any employees nor prior deposition transcripts related to the 2 other FLSA cases which were previously filed against the Defendants.

Defendants claim that the Plaintiff has not responded to their interrogatories is ill-founded.

I thank the Court for its review of this individual status report.

Very truly yours,

/s/ Mitchell Segal

Mitchell Segal